

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SCOTT CARROLL BOLTON,

Plaintiff,

v.

STATE OF WASHINGTON,
DEPARTMENT OF CORRECTIONS,
OLYMPIC CORRECTIONS CENTER,
WASHINGTON STATE CORRECTIONS
CENTER, SERGEANT MATE, JANICE
PRICE, SUE GIBBS, JOHN ALDANA,
TRACY HIXON, DON EARLS, and CHAD
LEE,

Defendants.

No. C12-5658 BHS/KLS

ORDER WITHDRAWING REPORT AND
RECOMMENDATION AND DENYING
PENDING MOTIONS

On November 2, 2012, Plaintiff filed a motion requesting dismissal of this case without prejudice, pursuant to Rule 41(a)(1). ECF No. 19. On November 7, 2012, the undersigned recommended that the District Court grant Plaintiff's motion. ECF No. 20. On the same day, Plaintiff filed five motions for preliminary injunctive relief, a motion for default judgment, a motion for amended claim, three motions for "order of notice", and a motion for ex parte communication. ECF Nos. 21-25, 27-33.

In his motion for ex parte communication, Plaintiff states that he filed the motion to voluntarily dismiss his case after his motion to consolidate this case with Case No. C12-5677 had been denied. He then states that "for reasons unknown to me, I'm assuming clerical error or misinterpretation," his motion for voluntary dismissal was granted. ECF No. 33 at 3-4. He asks that the Court allow his cases to survive. *Id.* at 4.

ORDER - 1

1 Plaintiff's motion to consolidate this case with Case No. C12-5677 was denied on
2 October 18, 2012. On November 19, 2012, Plaintiff's claims in Case No. C12-5677 were denied
3 without prejudice and the dismissal counted as a strike pursuant to 28 U.S.C. 1915(g). ECF Nos.
4 9 and 10 therein. It appears that Plaintiff may have been confused as to his obligations to
5 appropriately plead his claims in this case. Therefore, the Court will rescind its Report and
6 Recommendation dated November 7, 2012 (ECF No. 20) and will review Plaintiff's proposed
7 Amended Complaint filed on October 17, 2012 (ECF No. 16) to determine whether Plaintiff has
8 stated a viable 42 U.S.C. 1983 complaint.
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10 Plaintiff's remaining motions shall be **DENIED** as premature. The Court has not yet
11 determined whether this case will go forward on the Amended Complaint (ECF No. 16) and no
12 defendants have been served. Therefore, this Court has no jurisdiction over any defendants and
13 Plaintiff's numerous motions for preliminary injunctive relief and for default are premature. To
14 the extent Plaintiff seeks a preliminary injunctive relief, he must comply with Federal Rule of
15 Civil Procedure 65(b), which provides that a Court may only issue a temporary restraining order
16 without notice to the adverse party if (1) the facts in an affidavit or verified complaint clearly
17 show that immediate and irreparable harm will result before the adverse party can be heard, and
18 (2) the movant certifies in writing any efforts made to give notice and reasons why it should not
19 be required. Fed.R.Civ.P. 65(b). Plaintiff has met neither of these requirements.
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21 Plaintiff is directed to file **no further motions** in this case until it has been determined
22 that his claims will be allowed to go forward.
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24 Accordingly, it is **ORDERED**:
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1 (1) The Court's Report and Recommendation (ECF No. 20) dated November 7, 2012
2 is **WITHDRAWN**. The Clerk is directed to **strike** the noting date for ECF No. 20 and to re-
3 refer this case to the undersigned.

4 (2) Plaintiff's motions for preliminary injunctive relief (ECF Nos. 21, 22, 23, 24, and
5 25) are **DENIED without prejudice**.

6 (3) Plaintiff's remaining motions (ECF Nos. 27-33) are **DENIED as premature**.

7 (4) Plaintiff shall file no further pleadings or motions in this case until further Order
8 of this Court.
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10 (5) The Clerk shall send a copy of this Order to Plaintiff and to the Honorable
11 Benjamin H. Settle.

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13 **DATED** this 29th day of November, 2012.
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17 Karen L. Strombom
18 United States Magistrate Judge
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